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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,799	01/09/2002	Frank Leymann	DE920000043US1 (183)	5078
46320 7590 06/05/2009 CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP STEVEN M. GREENBERG 950 PENINSULA CORPORATE CIRCLE SUITE 3020 BOCA RATON, FL 33487			EXAMINER GOLD, AVI M	
			ART UNIT 2457	PAPER NUMBER
			MAIL DATE 06/05/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/042,799	<b>Applicant(s)</b> LEYMANN ET AL.	
	<b>Examiner</b> AVI GOLD	<b>Art Unit</b> 2457	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

This action is responsive to the RCE amendment filed on April 3, 2009. Claims 1-14 were canceled. Claims 15-18 were added. Claims 15-18 are pending.

### ***Response to Amendment***

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmberg, U.S. Patent No. 6,247,141, in view of Applicant's Admitted Prior Art (AAPA), in view of Rizvi et al., U.S. Patent No. 6,490,610, further in view of Helmer et al., U.S. Patent No. 6,411,991.

Holmberg teaches the invention substantially as claimed including fault tolerant server systems including redundant servers (see abstract).

As to claim 15, Holmberg teaches a method of operating a computer system, wherein the computer system comprises an application client, a first application server configured to process requests of the application client, a second application server

configured to process requests of the application client, and a database accessible by the first and second application servers, the method comprising:

- a first application server (col. 3, lines 10-11, Holmberg discloses a primary server);

- receiving, by the first application server, a request from the application client to the first application server (col. 3, lines 13-19, Holmberg discloses a client application request received at the primary server);

- forwarding the request to the second application server (col. 3, lines 5-22, Holmberg discloses a backup server, running if there is a problem with the primary server, receiving the request without the user knowing about the use of the backup server);

- receiving, by the second application server, the request from the first application server (col. 3, lines 5-22);

- generating, by the second application server, a response to the request (col. 3, lines 5-22);

- forwarding, by the second application, the response to the first application server (col. 3, lines 5-22);

- receiving, by the first application server, the response from the second application server (col. 3, lines 5-22); and

- forwarding, by the first application server, the response to the application client (col. 3, lines 5-22).

Holmberg fails to teach the limitation further including detecting by the first application server that a database is not accessible.

However, AAPA teaches the use of an application server informing the application client about the loss of a connection to a database, which must be happen after the application server detects the loss of the connection (page 1, paragraph 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Holmberg in view of AAPA to detect, by the first application server, that a database is not accessible. One would be motivated to do so because it would be more efficient for a server to detect that a database is not accessible by it than to use a separate means for that function.

Holmberg also fails to teach the limitation further including the use of a second application server when the first application server is not being able to access a database.

However, Rizvi teaches a method and apparatus for implementing an automatic failover mechanism for clients accessing a resource through a server (see abstract). Rizvi teaches the use of an automatic failover system (col. 3, line 33 – col. 4, line 20).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Holmberg in view of Rizvi to use a second application server when the first application server is not being able to access a database. One would be motivated to do so because it would eliminate the burden of manually re-logging onto the database system whenever a database session failure occurs (col. 3, lines 37-39).

Holmberg also fails to teach the limitation further including sending a request from the first application server to the second application server.

However, Helmer teaches a geographic data replication system and method for a network (see abstract). Helmer teaches the use of a failed server routing requests to a remote server for processing (col. 2, lines 2-15, 46-59).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Holmberg in view of Helmer to send a request from the first application server to the second application server. One would be motivated to do so because it would be a faster and more efficient backup for the server to forward the data to the backup server.

Regarding claim 16, Holmberg teaches the method of claim 15 wherein the response is received, from the second application server, to an input queue of the first application server (col. 6, lines 10-18, 29-40, Holmberg discloses a queue with the backup and primary servers).

Regarding claim 17, Holmberg teaches the method of claim 16, further comprising transferring the response from the input queue of the first application server to an output queue of the first application server (21) (col. 6, lines 10-18, 29-40).

Regarding claim 18, Holmberg teaches the method of claim 15, wherein the response is received, from the second application server, into an output queue of the first application server (col. 6, lines 10-18, 29-40).

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 15-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,711,606 to Leymann et al.

U.S. Pat. No. 6,625,141 to Glitho et al.

U.S. Pat. No. 6,148,307 to Burdick et al.

U.S. Pat. No. 5,978,577 to Rierden et al.

U.S. Pat. No. 6,801,927 to Smith et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AVI GOLD whose telephone number is (571)272-4002. The examiner can normally be reached on M-F 8:00-5:30 (1st Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/A. G./

Examiner, Art Unit 2457

/ARIO ETIENNE/

Supervisory Patent Examiner, Art Unit 2457